IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3963 OF 2007
IN
SUIT NO. 2894 OF 2007

Naushad Ahmed Asir Ahmed Ansari. ... Plaintiff.

V/s.

Hatay Ahmed Asir Ahmed Ansari. ... Defendant.

Mr. R.D. Mishra for the Plaintiff.
Mr. Vinit Naik i/b. Imtiaz Raibakkar for the Defendant.

CORAM : DR. D.Y. CHANDRACHUD,J.

10TH DECEMBER 2007.

P.C. :-

. Counsel appearing on behalf of the Defendant has placed on the record a compilation of documents containing the pleadings in the previous proceedings between the parties and is agreeable to the Notice of Motion being taken up for hearing and final disposal at this stage. Counsel appearing on behalf of the Plaintiff has no objection. Accordingly, the Notice of Motion has been taken up for hearing.

2. The suit is for a declaration that the Plaintiff has a half share in the property which is more particularly described in paragraph 1 of the plaint and for partition by metes and bounds. The property is described as follows :-

> " C.S.No.1739 of Byculla Division, admeasuring 5750 sq. yards equivalent to 4807.72 sq.meters or thereabout and C.S. No.1/1739 of Byculla Division admeasuring 610 sq.yards equivalent to 510.04 sq.meters i.e. total admeasuring 5317.76 sq.meters or thereabout and registered by the Collector of Land Revenue under Old No.524, New No.1A/14033-Old Survey No.269 and New S. No.1/3553 together with tenements, buildings and structures constructed thereon lying and situate at Maulana Azad Road, (Rippan Road) in the Registration Sub-District of Mumbai in the Insland of Mumbai."

3. It is an agreed position before the Court that the Plaintiff had instituted a prior Suit, Suit 2198 of 2001 for dissolution and accounts of a partnership firm

in which the Plaintiff and the Defendant were partners. The Defendant was impleaded as the Second Defendant to the earlier Suit. The Plaintiff and the Defendant are brothers. The parties arrived at consent terms in the earlier suit which accordingly was disposed of on 14th June 2004 by the Hon'ble Mr. Justice S.C. Dharmadhikari. The consent terms between the parties in the earlier Suit are to the following effect :-

> "1. That the Plaintiff agrees and/or undertakes and/or confirms having received full and final payment from the Defendants towards his claim in the said partnership business and also the claim towards the above suit. The Plaintiff further agrees and confirms that the Plaintiff has no claim of whatsoever nature against the Defendants, and also further agrees and confirms that the Plaintiffs have no rights, title and/or interest either in the business or the properties held by the Defendants, since the Plaintiff has received his share in the business to his full satisfaction.

2. The Defendants hereto will have full right, title and interest to continue with their business activities and also with the project of the development of the properties held by the Defendants, and further the Plaintiff undertakes not to interfere in future in the business and/or other activities of the Defendants.

3. The parties hereto agrees and/or undertakes and/or confirms that they do not have any claim of whatsoever nature against each other.

4. The parties hereto also undertakes to withdraw all other proceedings filed among the parties either in the Civil Court or the Criminal Court, and also further undertakes to withdraw each and every allegation made against each other in all the proceedings between the parties hereto unconditionally.

5. Parties to act and abide by the terms of the above consent terms."

4. It is necessary to note that the Plaintiff had appeared in the earlier Suit through an Advocate. It is also not disputed that the Plaintiff has signed the consent terms. Exhibit 'H' to the plaint in the earlier Suit filed by the Plaintiff herein contains a description of properties standing in the name of the partnership firm. At Serial No. 1 of Exhibit 'H' is the same property which form the subject matter of the present Suit. Paragraph 21 of the plaint specifically describes the aforesaid property as property which stands in the name of the firm. The averment in paragraph 8 of the present suit is that the Plaintiff was made to retire from the firm "misbelieving " that the property belongs to the partnership firm. The submission cannot be accepted prima facie at the interlocutory stage particularly in the light of the fact that the previous Suit instituted by the Plaintiff proceeded on the basis that the property in question belong to the partnership firm. The parties have arrived at Consent Terms under which the Plaintiff has acknowledged having received full and final payment of his share, in consideration whereof, the Plaintiff has stated that he has no right, title or interest either

in the business or the property held by the Defendant. In Clause 2 of the Consent Terms, the Plaintiff has agreed that the Defendant will have full right, title and interest to continue with the business and the project of developing the properties.

5. In this view of the matter, no prima facie case has been made out. The Notice of Motion is accordingly dismissed.